THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.13661 of 2003

Dated 29th June, 2006

Between :-

M. Sukhdev Prasad and 3 others ..

Petitioners

And

The Commissioner & Special Officer,
Municipal Corporation of Hyderabad,
Lower Tank Bund Road, Hyderabad
and two others ..
Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.13661 of 2003

ORDER:-

1. Heard Sri Jalli Kanakaiah, the learned Counsel representing the writ petitioners and Smt. Jyoti Kiran, the learned standing Counsel representing the respondents 1 and 2.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of respondents in not allotting alternate land or to pay compensation in lieu of the site belonging to the petitioners in plot Nos.17 and 18 in sy.No.63 situated in Vinobhanagar, North Lalaguda, Secunderabad, to an extent of 452.66 sq.yds which is being used by the Municipal Corporation of Hyderabad by laying sewerage pipe lines and construction of public latrines, as illegal, arbitrary and violative of Articles 14, 16, 21 and 300-A of the Constitution of India and also contrary to the policy of the Government and consequently direct the respondents to allot alternate land equivalent to the petitioners land or to pay compensation in lieu thereof to the petitioners herein forthwith and pass such other suitable orders.

3. The learned Counsel representing the writ petitioners had taken this Court through the affidavit, the

counter affidavit and also the reply affidavit and would maintain that in the facts and circumstances of the case, since they are the owners of the property, they are entitled the compensation. The learned Counsel also had referred to the proceedings Lr.No.720 dated 19-10-2001 and would maintain that in the light of the same, there cannot be any dispute that the petitioners are owners of the property in question and hence they are entitled for either alternate site or compensation as prayed for in the W.P. The learned Counsel also would submit that it is not an agreement of sale simplicitor but an agreement of sale coupled with the General Power of Attorney registered and hence the same can be looked into for the purpose of establishing the *prima facie* title of the petitioners in relation to the property in question.

4. Smt. Jyothi Kiran, the learned standing Counsel representing respondents 1 and 2 had taken this Court through the counter affidavit and would maintain that in the light of the facts and circumstances inasmuch as these were in existence sufficiently for a long time, at this distant point of time the demand made by the petitioners cannot be complied with. The Counsel also would contend that even otherwise inasmuch as these are all disputed questions of fact, such questions cannot be ***resolved*** before a Writ Court, the proper remedy is to file a

regular civil suit, if they are so advised.

5. Heard both the Counsel.

6. The petitioners state that they have purchased the said plots for a valid consideration by obtaining an agreement of sale dated 31-7-99 from one Anthony who purchased the same from its original owners Varada Reddy and Madhusudhana Reddy. It is also further stated that the said Anthony was the absolute owner and possessor of the said plots and for selling the said plots in favour of the petitioners, he had obtained permission from Urban Land Ceiling Authority on 24-10-1989 vide proceedings No. F1/1051/26/89. It is stated that in the light of the same, it is clear that site in plot Nos.17 and 18 in Sy.No.63 is exclusively private land. It is also stated that petitioners 2 and 3 got employment and they have been working at Bangalore and Ramagundam respectively and their vendor was aged more than 70 years at the time of agreement of sale and due to his ill-health, he could not move from his house and hence he requested the petitioners to look-after the site in plot Nos.17 and 18 in Sy.No.63. These petitioners 1 and 2 had given their acceptance and consent. It is also stated that due to pre-occupation in employment, the petitioners 1 and 2 were compelled to leave Secunderabad and

interregnum the authorities of Municipal Corporation of Hyderabad have dugged and laid down the Sewerage Pipe Line under the plots and thereon they have constructed two 8-seater public latrines. As a result, the nature of the plots had been spoiled and without giving any notice or intimation either to the vendor of the petitioners or to the petitioners the same was done and when the petitioners came to know the same, they made an application for payment of compensation by initiating the land acquisition proceedings or to give alternate land to the equal extent of their land in which the M.C.H., had constructed the public latrines. It is also stated that they have been making several representations including the representation dated 12-9-2000. It is also stated that on repeated requests of the petitioners as well as after obtaining the instructions froj respondents 1 and 2, the 3rd respondent enquired into better particulars of the land to whom it belongs etc., from the Mandal Revenue Officer, Maredpally, as well as the market value of the said two plots from the Sub-Registrar of Registration concerned. The concerned M.RO. and Sub-Registrar have issued reply letters on 28-8-2001 and 2-7-2001 respectively clarifying that the said land belongs to one Varada Reddy and Madhusudhana Reddy who were the vendors of the

vendor of the petitioners. It is also stated that inasmuch as the respondents had unauthorisedly occupied and raised some construc6tion on the land belonging to the petitioners, they are entitled to either compensation or alternate land.

7. In the counter affidavit, it was stated that the respondents are not having knowledge about the petitioners' caste or the benefits or they have no knowledge about the ownership about the disputed sites and the petitioners were called upon to prove the same. It is stated that it is learnt from the local residents of Vinobha Nagar that public latrines were constructed 20 years back. It is stated that it is learnt from the General Secretary of Vinobha Nagar Welfare Committee Sri N.Das also informed in his letter No.5/2003 dated 18-9-2003 that the public latrines were constructed long back (20 years ago) with the knowledge/consent of the owner. In response to the Executive Engineer, M.C.H., Secunderabad letter No.381/1 dated 26-7-2001 that Mandal Revenue Officer, Marredpally clarified in his Pr.No.B/3673/01, dated 28-8-2001, that the land where the public latrines were constructed is situated in Sy.No.63 and measuring Ac.3.06 guntas stands in the name of Varada Reddy and Madhusudhan Reddy. The public latrines were constructed 20 years ago in the said

site to meet the necessities of the local public, on the advice of the local Welfare Committee, stated that the land owner himself allotted the piece of land in dispute to construct the public utilization, specifically for the persons who could not have the latrines. At that time of construction neither the petitioner nor the owner objected by producing the title documents. In this connection, it is stated that the petitioners state that they purchased the plot No.17 and 18 in Sy.No.63 from Sri Anthony, S/o. Manikyam through Notary dated 31-7-99. As the latrines were constructed about 20 years back, it is not known as to how the petitioners have purchased the said plots No.17 & 18 in Sy.No.63 in 1999 without proper verification and having known that the latrines were already existing and used by the local public at the time of purchase of the land by the petitioners. It is further stated that the petitioners had made representation claiming their right in the said disputed land and also sought for the compensation or for allotment of alternate land. The claim of the petitioners is untenable and unsustainable as the latrines were constructed over the disputed land 20 years ago and are being used by the locality public. The petitioners herein recently started making representations for payment of compensation or allotment of alternative

land in lieu of the land where the public latrines in existence. As verified from the records of M.C.H., none of the above owner objected to the construction of public latrines, only recently the petitioners represented for payment of compensation or allotment of alternate land.

8. A reply affidavit is filed again taking the self-same stand which had been taken in the affidavit filed in support of the Writ Petition and also explaining what had been stated in the counter affidavit. In the reply affidavit at paras 3 and 4 it was specifically averred as hereunder:-

> *"In reply to the contents of para-4 of the counter affidavit, it is respectfully submitted that the respondents are relying on the letter of one Mr.M.Dass, the General Secretary of Vinobha Nagar Welfare Committee stating that the public latrines were constructed 20 years back with the knowledge and consent of the owner. Beyond that the respondents have not produced any record or filed any material documents to establish that they have obtained consent from the then land owner. In fact, on the name of the Vendor of the petitioner the Urban Land Ceiling Authority have issued permission under Sec.26 of the Urban Land Ceiling Act for sale vide proceedings No.F1/1051/26/89, dated 24-10-1989, as such, it is very much clear that the subject land of the said proceedings is open land and as such, there is no truth in the letter of the 3rd party relying on by the respondents. In fact,*

the original owners Varada Reddy and Madhusudhan Reddy have sold out the land in Sy.No.63 in favour of different persons including the petitioners herein. It does not mean that the land is remaining in the name of the original till the respondents have taken possession of the same. It is very much substantiated by the proceedings of the Urban Land Ceiling Authority referred to above. The respondents having said that the letter of one Mr.Dass establishes that the public latrines were constructed with the consent of the owner and on the other hand contending that at the time of construction of latrines, neither the petitioners nor their vendor have made any objection. Thus, the said statements are quite contradictory which itself shows that there is no consent whatsoever from the petitioners or their vendor.

It is respectfully submitted that the petitioners have specifically stated in para 6 of the affidavit filed in support of the above Writ Petition that they were served a notice asking them to produce relevant documents to establish that they are the rightful owners of the said land on 19-10-2001 and the petitioners though submitted the relevant documents to establish their rights over the said land, having satisfied with that the respondents have not taken any action, inspite of making number of representations since 2001 onwards. Hence, there is no truth in the contentions raised by the respondents in their counter. Therefore, the Writ Petition deserved to be allowed as prayed in the

interest of justice."

9. On a careful analysis of the whole factual matrix, it is clear that the petitioners are claiming the property by virtue of an agreement of sale coupled with a Power of Attorney which is duly registered as contended by the Counsel representing the petitioners. In the light of the specific stand taken by the respondents in the counter affidavit, the title or ownership of the property is in dispute as far as the petitioners are concerned and though it may be a fact that they are tracing their title from the original owners, these are all factual controversies which may have to be resolved by a competent Civil Court, but definitely the Writ Court cannot go into those questions. Hence, this Court is not expressing any opinion relating to the other questions which are left open to be decided by a competent Civil Court. It is made clear that the petitioners are at liberty to approach the competent Civil Court to establish their rights over the property in dispute and also to claim other ancillary reliefs if they are so advised in this regard. Except giving this liberty, no other relief can be granted in the present Writ Petition since these are all disputed questions of fact. The Writ Petition is accordingly disposed of. No order as to costs.

_____

Justice

P.S.Narayana

29th June, 2006

SMR